

Jon Givens

From: McIntosh, Scott [Scott.McIntosh@dlapiper.com]
Sent: Friday, January 05, 2007 11:57 AM
To: Jon Givens
Cc: Jana Vanderbrink; Dienelt, John; McIntosh, Scott
Subject: Markup of Draft Joint Memorandum



Document.pdf (217 KB)

Jon,

I did not receive a response to my email from yesterday regarding the Joint Memorandum, including the question regarding the meaning of the phrase "Since the Court is not addressing the piercing issue," in Section II of your draft.

However, in the interest of facilitating the Joint Memorandum, which is due today, I am attaching a markup that either revises the "joint" sections to be neutral, or sets forth the arguments of each side, where there is a dispute.

Please let me know whether you will agree to submission of a Joint Memorandum, with the proposed revisions on the attached document, together with our insert for Section I(B)(2), plus any changes you plan to make to Section I(B)(1).

Regards,
Scott

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Thank you.

Counsel
for
both sides,
or none.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
AT ANCHORAGE

Case No. 3:03-cv-29 [TMB]

EXHIBIT 1
Page 2 of 7

Exhibit A.

including
names at
the time
the First
Amended
Complaint
was filed,

~~privately owned company owned by members of the Halcro family and an Employee Stock Ownership Plan. The defendant corporations' ownership structure, and various identities is set forth on the attached organizational chart.¹ Additionally, attached as Exhibit B is an organizational chart indicating Alaska Rent-A-Car's position on the relationship of Alaska Rent-A-Car, Inc. to the various defendants. Additionally, attached as Exhibit C is an organizational chart indicating defendants' position on the relationship of Alaska Rent-A-Car, Inc. to the various defendants.~~

B. The Identity of the Franchisor/Franchisee: Licensor.

The parties disagree as to the identity of the franchisor/licensor and therefore each side sets forth its respective position on the identity of the franchisor/licensor ~~respectively~~.

1. ^{Plaintiff} Alaska Rent-A-Car, Inc.² contends the franchisors/licensors are Avis Budget Car Rental/CCRG, Avis Rent a Car System LLC/Inc. and Avis Car Rental Group LLC/Inc.

Alaska Rent-A-Car contends that the current franchisor/licensor is Avis Budget Car Rental LLC f/k/a Cendant Car Rental Group, LLC f/k/a Cendant Car Rental Group, Inc. (hereinafter "Avis Budget Car Rental/CCRG"). The franchisor/licensor listed in the 1965 Exclusive License Agreements (hereinafter "ELAs") for Alaska Rent-A-Car is Avis, Inc.² The 1976 Amendment to the ELAs was executed by Avis, Inc.³ Avis, Inc. currently known as Avis Car Rental Group, LLC and formerly known as Avis Car Rental Group, Inc. (hereinafter "Avis Car Rental Group") assigned the role of franchisor to Avis Rent a Car System, Inc. on May ____, 1965.⁴

In 2003 after the Budget acquisition, Avis Rent a Car System, Inc. and Avis Car Rental Group, Inc. were converted into their alter ego Avis Budget Car Rental/CCRG. Avis Rent a Car System, Inc. and Avis Car Rental Group, Inc. are both franchisors and

¹ ~~Exhibit A~~

² See Docket ____, Exhibit ____ at p. 1-4.

³ See Docket ____, Exhibit ____ at p. ____.

⁴ See Docket ____, Exhibit ____, 1965 Assignment and cover letter thereto.

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licensors of Alaska Rent-A-Car and still legally obligated with such responsibilities, but all the employees who perform franchisor/licensor functions and responsibilities have been transferred to Avis Budget Car Rental/CCRG, and thus the alter ego Avis Budget Car Rental/CCRG performs all the functions of a franchisor.⁵

Alaska Rent-A-Car contends that its current franchisor/licensor is Avis Budget Car Rental/CCRG, and further Alaska Rent-A-Car contends Avis Rent A Car System, LLC f/k/a Avis Rent A Car System, Inc. and Avis Car Rental Group are also legally obligated as its franchisor/licensor. Alternatively, under the piercing and alter ego allegations, Alaska Rent-A-Car contends all defendants are the franchisor/licensor of Alaska Rent-A-Car, Inc.

Alaska Rent-A-Car has previously set forth evidence and arguments demonstrating its franchisors/licensors include (1) Avis Budget Car Rental/CCRG, (2) Avis Rent A Car System, LLC/Inc., and (3) Avis Car Rental Group. For convenience of the Court, the foregoing arguments and authority are set forth at:

- (1) Docket 163 at p. 45 and n. 283-286 and accompanying text, *see also* Docket 163 at pp. 15-17;
- (2) Docket 277 at pp. 45-46 and n. 190-195 and accompanying text;
- (3) Docket 199 at p. 3 and n. 11-15 and accompanying text;
- (4) Docket 172 at pp. 5-6 and n. 19-20 and accompanying text; **[also check the prior page, page 5 on footnote 18 and see if it suggests a licensor]**
- (5) Docket 164 at p. 11 and n. 56-57 and accompanying text;
- (6) Docket 279 at p. 40 and n. 142 and accompanying text;

⁵ See Docket 279 Exhibit 30, October 16, 2006, interrogatory response number 9. *See also* Docket 279 p. 40, n. 142 and accompanying text.

(7) See also Exhibit ____, attached to this joint memorandum; interrogatories dated October 9, 2006, interrogatory responses 2 and 4; see also interrogatory responses dated October 18, 2006, interrogatory responses 7, 8 and 9⁶; and

(8) See also Docket 183 at pp. 4-5, n. 17-18 and accompanying text.

2. Defendants' contention as to the identification of the franchisor/licensor.

[INSERT DEFENDANTS VERSION].

Defendants
will supply
section
heading and
identity of
Licensor.

II. STATUS REPORT ON DOCKET 178.

The Court has asked whether the motion at Docket 178 is moot. Docket 178 at pages 1-3 seeks "I. Declaratory and Injunctive Relief is Appropriate to Ensure the Car Rental Business Retains its \$802,000,000." ~~Since the Court is not addressing the piercing issue,~~ ⁹ this portion of the motion at Docket 178 is moot. Docket 178 pages 4-6 contains the portion of the motion addressing "II. Permanent Injunctive Relief Should be Granted and Joining Defendants From Associating Avis and Budget in their Corporate Names and Otherwise." ^{plaintiff contends} This portion of Docket 178 is not moot as plaintiff continues to request the Court to grant permanent injunctive relief preventing the names Avis and Budget from being associated and further to prevent the joint marketing of Avis and Budget.

Insert A
(see attached)

DATED this ____ day of January, 2007.

BANKSTON GRONNING O'HARA, PC
Attorneys for Plaintiff Alaska Rent-A-Car, Inc.

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Add
Signature
Block
for
Defendants

⁶ The foregoing interrogatories indicate all franchisor/licensor services are now provided by Avis Budget Car Rental/CCRG and that no such services are presently provided by Avis Rent A Car System, Inc. or Avis Car Rental Group, Inc. employees

Insert A (To be inserted at end of Section II)

Defendants contend that this portion of Docket 178, to the extent it seeks to preclude Defendants from using the names Avis and Budget together in a corporate name, or otherwise in proximity to each other, is also moot because the name changes have already occurred. Defendants continue to maintain that Plaintiff's request for injunctive relief should be denied, to the extent such request is not moot.

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CERTIFICATE OF SERVICE

I hereby certify that on _____ a copy of foregoing _____
was served electronically on Diane F. Vallentine and John F. Dienelt and on

Barry M. Heller
DLA Piper US LLP
1200 Nineteen Street NW
Washington, DC 20036-2430

by regular U.S. Mail

s/Jon T. Givens _____

Joint Memorandum Pursuant to the Order at Docket 297
Alaska Rent-A-Car, Inc. v. Cendant Corp., et al., Case No. 3:03-cv-29 [TMB]
A3388\05\JOINT MEMO DOCKET 297\JOINTmemo

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EXHIBIT 1
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